

Exhibit 18

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Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 - - -

4 IN RE: NAMENDA DIRECT : CIVIL ACTION NO.
5 PURCHASER ANTITRUST : 1:15-cv-07488-CM (JF)
6 LITIGATION :

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11 October 6, 2017
12 HIGHLY CONFIDENTIAL

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14 Videotaped deposition of DR.
15 RUSSELL LAMB, taken at the offices of Berger &
16 Montague, PC, 1622 Locust Street,
17 Philadelphia, Pennsylvania 19103, beginning at
18 9:02 a.m., before LINDA ROSSI-RIOS, a
19 Federally Approved RPR, CCR and Notary Public.

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1 A. Right.

2 Q. That stands for days of therapy.

3 Is that right?

4 A. Sometimes refers to -- used to
5 or defined as days on treatment, but, yes,
6 days on therapy, days on treatment.

7 Q. If you turn, sir, to page 45,
8 paragraph 80 of your amended report. You
9 explain how you compute days of therapy. Is
10 that right?

11 A. That's right.

12 Q. And specifically you say that
13 you [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

21 Do you see that, sir?

22 A. Correct. I'm saying you read
23 that correctly. Yes, I see that.

24 Q. In paragraph 79 immediately
25 preceding, you explain that the NSP that you

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1 refer to in paragraph 80 is a National Sales
2 Perspective database of IMS. Is that right?

3 A. Yes.

4 Q. And the footnote 157 in
5 paragraph 79 lists the sources of information
6 from which IMS compiles its National Sales
7 Perspective database. Is that correct?

8 A. That's correct.

9 Q. And those sources identified in
10 footnote 157 include sales by pharmaceutical
11 companies themselves?

12 A. Yes.

13 Q. And those sources that IMS looks
14 at also include distribution centers?

15 A. That's correct.

16 Q. It includes wholesalers?

17 A. That's correct.

18 Q. It includes hospitals, among
19 others. Correct?

20 A. Yes.

21 Q. Am I correct, sir, that the NSP
22 database does not track actual physician
23 prescriptions to compile its sales database?

24 A. I believe that's correct. I
25 don't believe that the NSP data is based on a

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1 survey or census of physician scripts,
2 prescriptions. It's based -- pardon me, just
3 to clarify my answer, it's based on the
4 movement of the product through the supply
5 chain.

6 Q. Those sources identified in
7 footnote 157 of your report. Correct?

8 A. That's correct.

9 Q. Turn back now to paragraph 146.
10 For the moment I'm sticking with the first
11 sentence, the summary, as you call it, of the
12 calculation of your product hop damages.
13 There is a part of your formula in the second
14 half of the sentence titled "But-For Namenda
15 XR DOT," or days of therapy.

16 Do you see that, sir?

17 A. Correct.

18 Q. That part of your damages
19 methodology estimates the volume of soft
20 switches in your damages calculation. Is that
21 a fair statement?

22 A. I think that's correct, yes.
23 That's a reasonable way of thinking of it.

24 Q. And anything above this
25 estimated level of soft switches up to the

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1 level, your model doesn't look at physician
2 prescribing preferences. Correct?

3 MR. SORENSEN: Objection. Form.

4 THE WITNESS: What do you mean
5 by -- in that question by
6 "preferences," sir?

7 BY MR. CHUNG:

8 Q. A physician prescribing Namenda
9 XR to a patient, for example, because of its
10 once-a-day formulation?

11 A. No, that's not appropriate or
12 necessary to look at that issue. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

Q. I appreciate all of that, but let's go back to I think the much simpler question that I asked, which is that your model does not attempt to take into account individual physician prescribing preferences?

MR. SORENSEN: Objection. Form. Asked and answered. Go ahead.

THE WITNESS: I think that's what I was trying to explain in my previous answer. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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BY MR. CHUNG:

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[REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. Sitting here today, Dr. Lamb, you can't exclude the possibility that some of the damages that you have calculated include shares of Namenda XR that were prescribed by physicians who simply preferred the once-a-day formulation. Is that right?

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1 Company forecasts. Correct?

2 A. That's correct.

3 Q. And in paragraph 144, you rely
4 on another expert, Professor Ernst Berndt, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Did I understand
8 that correctly?

9 MR. SORENSEN: Objection. Form.
10 Misstates his report. Go ahead.

11 THE WITNESS: No. And if you
12 read paragraph 144 carefully, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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BY MR. CHUNG:

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Q.

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I'm not asking about any communications, the content of them. Did you have any discussions with Professor Berndt?

Yes.

Q. When did you have those discussions?

A. Well, I had more than one. There were a number. They began in July of 2017, occurred a number of times between July and September. I don't recall the exact dates of the first conversation or the last conversation, but July to September, a number of times in that period.

Q. Now, I understand your testimony that you did not rely on Professor Berndt for the proposition that Forest's forecasts were

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1 reliable. Did you rely in your analysis on
2 any other aspect of Professor Berndt's work?

3 A. No.

4 Q. Okay. Let's take a look at
5 Table 3 which is on page 88 of your amended
6 report.

7 A. Okay.

8 Q. Let's just make sure that I
9 understand this correctly. Table 3 itemizes
10 the forecasts that you used to arrive at your
11 estimate of approximately [REDACTED] percent but-for
12 Namenda XR share. Is that right?

13 A. That's correct.

14 Q. These eight forecasts in
15 Table 3, specifically the percentage soft
16 switch rates on the right-hand column, are the
17 data points that you used to calculate that
18 average estimate of approximately [REDACTED] percent.
19 Correct?

20 A. That's correct. Let me just be
21 clear, I don't want to split hairs too much,
22 but these are the forecasts that result in the
23 [REDACTED] percent that's reported in Table 3.

24 There's other support in the record, including
25 I note in my report Judge Sweet's opinion as

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1 well mentions the [REDACTED] percent, and Forest
2 documents reference to the [REDACTED] percent. So
3 there's other support for it. But the
4 calculation in this report in Table 3 is based
5 on these forecast documents, that's correct.

6 Q. By definition, a forecast is a
7 prediction or an estimate of what might happen
8 in the future. Right?

9 MR. SORENSEN: Objection. Form.
10 Go ahead.

11 THE WITNESS: I know that that
12 seems like a fairly clear,
13 straightforward question, but it's a
14 lot more complicated than that.
15 I think -- let me try to tell you what
16 I think of a forecast as. It's a -- a
17 forecast is a way of looking at how
18 different assumptions about how the
19 future will look results in a
20 different outcome for some variable of
21 interest. That's an economic forecast.
22 But I know that we're only talking
23 about economics here, not variables and
24 not the weather. In other words, it's
25 in my mind, and I've done it now

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1 Q. Well, let's start with different
2 question and then we'll move back.

3 A. Tell me -- okay. A forecast can
4 be evaluated ex post, that is after the future
5 is unveiled, based on what the forecast
6 predicts unless the future involves a
7 counterfactual to what the assumption in the
8 forecast is here. So these forecasts, one
9 can't look at the future to evaluate the
10 forecast because the future ended up being
11 tainted by the hard switch strategy which was,
12 by the way, in part -- the purpose of these
13 forecasts was to understand, in part,
14 understand what the effect of hard switch
15 strategy might be by comparison to what would
16 happen without it.

17 So as I understand your
18 question, I would say, look, in many cases
19 your forecast can be evaluated based on what
20 unfolds in the future in the actual world.
21 But if your -- if your forecast is based on a
22 counterfactual to what actually happens, for
23 example, you assume there is no hard switch
24 conduct, when, in fact, in the future hard
25 switch conduct enters the actual world, you

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1 can't look at the experience in the actual
2 world to say this forecast of what would
3 happen but for or in the absence of the hard
4 switch strategy is right or wrong. It doesn't
5 inform you as to that. And that's my
6 understanding of how to think about a
7 forecast.

8 Q. I think you answered my
9 question, but I think there's a different way
10 to ask it.

11 There's nothing in these
12 documents, these eight documents in Table 3,
13 for example, that says, okay, in the future we
14 will look at data searches X, Y, Z, and we
15 will be able to confirm whether our forecasts
16 on this date turned out to be largely correct
17 or not?

18 A. I don't believe there's that
19 kind of discussion. I have to go back and
20 look at the actual -- you know, the actual
21 forecasts are complicated. They have a Bates
22 stamp and we talk about them as a document.
23 There -- you know, there's a lot of
24 information there in Excel spreadsheets that
25 have been looked at. I don't believe there's

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1 the kind of information that you're alluding
2 to that wouldn't be what I would expect to
3 find in the forecast.

4 Q. Okay. So you don't have a clear
5 recollection of there being those sorts of
6 sources available or even discussed in these
7 forecasting documents. Right?

8 A. I don't recall seeing that,
9 that's correct.

10 Q. Let's turn back to Table 3. As
11 we've established, you testified that you
12 chose -- you used these eight forecasts to
13 compute your average soft switch conversion
14 rate. But you talked about there being other
15 sources out there that relate to your average
16 of approximately ■ percent soft switches. Do
17 you recall that?

18 A. I didn't say sources. I think I
19 said support for the ■ percent XR conversion
20 rate with the soft strategy, soft switch
21 strategy.

22 Q. And, in fact, there were many
23 more Forest forecasts generated other than the
24 ones that appear in Table 3. Am I correct?

25 MR. SORENSEN: Objection. Form.

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1 THE WITNESS: There were other
2 forecasts, that's correct. Some of
3 those other forecasts involved
4 assumptions about generic entry and XR
5 launch that are at odds with the world
6 that I was trying to understand, the
7 but-for world that I was trying to
8 understand. I discuss that in
9 paragraph 152 just above Table 3 that
10 we've been looking at. So I point you
11 to that discussion, paragraph 152 is
12 relevant to that question.

13 BY MR. CHUNG:

14 Q. Right. But in any event, you're
15 aware that there were many other Forest
16 forecasts beyond the eight that appear in
17 Table 3. Right?

18 MR. SORENSEN: Objection. Form.
19 Asked and answered. Go ahead.

20 THE WITNESS: You said many
21 other, there were other forecasts, I
22 don't recall how many. A number. More
23 than one other one or more than two
24 other ones.

25 BY MR. CHUNG:

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1 mark Lamb Exhibit 5. This is the
2 expert report of Ernst Berndt.

3 - - -

4 (Exhibit Lamb-5, Expert Report
5 of Ernst R. Berndt, PhD, was marked for
6 identification.)

7 - - -

8 BY MR. CHUNG:

9 Q. Sir, I'm absolutely not going to
10 ask you to read all of Professor Berndt's
11 report. I can direct you to very specific
12 passages in it that I'd like to ask you about.
13 But let me just start with a general question.
14 Did you read Professor Berndt's report?

15 A. The one that's in front of him?

16 Q. I'm sorry, yes, go ahead.

17 A. Thank you.

18 Q. I apologize.

19 A. I haven't read Professor Berndt
20 report.

21 Q. You haven't. So when you wrote
22 in your expert report that Professor Berndt
23 had found these forecasts to be reliable, how
24 did you come to that understanding before you
25 submitted your report?

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1 A. That's based on conversations
2 with counsel principally and conversations
3 with Professor Berndt.

4 Q. And you felt confident enough in
5 your citation of Professor Berndt based on
6 those conversations without reading his expert
7 report?

8 A. I didn't cite Professor Berndt
9 and I didn't rely on Professor Berndt. As I
10 discussed earlier, I just summarized what I
11 understood to be the nature of his opinion
12 which is consistent with my opinion. But it
13 isn't necessary for me to have Professor
14 Berndt's report in order to reach the opinions
15 that I've reached in this matter. I conducted
16 my own analysis and I'm not relying on
17 Professor Berndt's analysis.

18 Q. Maybe we're hair splitting. But
19 you say you didn't cite him. In your report
20 that you wrote and that you're responsible
21 for, you felt the need for some reason to
22 refer to Professor Berndt and his conclusion.
23 Right?

24 MR. SORENSEN: Objection. Asked
25 and answered. Objection. Form. Go

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1 ahead. And argumentative. Go ahead.

2 THE WITNESS: I don't know if I
3 agree with your characterization that I
4 felt the need to. I did. It's
5 relevant in understanding the kind of
6 exercise that I did and the methodology
7 that I applied. As I said a moment
8 ago, I'm not relying on Professor
9 Berndt. It is relevant that Professor
10 Berndt, who understands a lot about
11 pharmaceutical markets, looked at the
12 forecasts that Forest had prepared to
13 think about soft switch XR conversion
14 and determine that those forecasts were
15 a reliable way of understanding what
16 the XR conversion rate would have been
17 in a world absent the hard switch
18 strategy. But I'm not relying on it,
19 I'm not dependent upon Professor
20 Berndt's report in order to reach any
21 of the opinions or conclusions I've
22 reached. I understand that those are
23 his opinions. I haven't read his
24 report.

25 VIDEOGRAPHER: Excuse me,

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1 Counsel, we have five minutes.

2 MR. SORENSEN: I'm sorry?

3 THE WITNESS: Five minutes on
4 the tape.

5 MR. CHUNG: Let's go ahead and
6 swap it out now.

7 VIDEOGRAPHER: The time is 1:54.
8 We're going off the video record.

9 - - -

10 (A recess was taken.)

11 - - -

12 VIDEOGRAPHER: The time is 1:55.
13 We are back on the video record. Disc 3.

14 BY MR. CHUNG:

15 Q. Dr. Lamb, thank you for
16 clarifying the reason why you referred to
17 Dr. Berndt. In your answer you said that
18 Dr. Berndt's opinion was relevant in
19 understanding the kind of exercise that I did.
20 Did I understand that correctly?

21 A. I don't recall the exact words
22 but that's a fair characterization of my view.

23 Q. Did you look at the work that
24 Dr. Berndt did in order to reach his opinion?

25 MR. SORENSEN: Communications

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED] [REDACTED]
4 [REDACTED] Do you see

5 that, sir?

6 A. Yes.

7 Q. Were you aware of this development
8 when you reached the conclusions in your
9 report, amended report?

10 A. I can't recall if this is a
11 document that I cite. I'd have to go back and
12 check Appendix B. It may be or may not be.
13 But I was aware of at least some formulary
14 changes with respect to Namenda XR, and Optum
15 in particular, when I prepared my expert
16 report and my amended expert report.

17 Q. Did you consider this
18 development, and by that I mean the placement
19 of Namenda XR on these formularies, when you
20 made your decision to cap the but-for Namenda
21 XR share rate at [REDACTED] percent?

22 MR. SORENSEN: Objection. Form.

23 THE WITNESS: Yes, I considered
24 that issue and I note that this is an
25 e-mail that's dated December 20, 2013.

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As I explained a couple of times
already today, at that point the hard
switch strategy was already in full
swing. As I noted in my expert report,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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BY MR. CHUNG:

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MR. SORENSEN: Objection. Form.

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Go ahead.

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THE WITNESS: I'd have to go

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back and look at my testimony to see

19

how I answered that question because as

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I'm sitting here, I can't recall my

21

answer. █

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BY MR. CHUNG:

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Q. I'm not disputing that. I'm

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just trying to understand this better.

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[REDACTED]

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[REDACTED]

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1 Q. Earlier in your report you
2 identified 65 proposed class members.
3 Correct?

4 A. Correct.

5 Q. Am I also correct in your
6 Exhibit 1 you only have 63 of those proposed
7 class members?

8 A. That's correct.

9 Q. If a potential class member
10 stopped purchasing Namenda XR before the
11 February 2014 announced withdrawal of Namenda
12 IR, could they have suffered injury under your
13 no hard switch but-for world?

14 A. Yes.

15 Q. So you allocate damages under
16 your hard switch damages model to purchasers
17 who stopped purchasing Namenda XR before
18 February 2014?

19 A. I haven't allocated any damages
20 for my hard switch -- no hard switch but-for
21 world to individual class members. That's not
22 an analysis that is contained in my expert
23 report.

24 Q. Right, but your testimony is
25 that if a potential class member just stopped